

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.8.102, 17.8.301, 17.8.901, 17.8.1007,) )  
17.8.1201, 17.8.1206, and 17.8.1212 )  
pertaining to incorporation by reference )  
of current federal regulations and other )  
materials into air quality rules )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On August 6, 2008, at 2:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., July 25, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) Unless expressly provided otherwise, in this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2006~~ 2007, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference is to the 2000 edition of the USC and Supplement ~~IV~~ V (~~2006~~ 2005);

(c) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2006~~ 2007, edition of the Administrative Rules of Montana (ARM).

(2) If EPA or a federal court of competent jurisdiction vacates, or otherwise nullifies, any emission standard, in whole or in part, incorporated by reference pursuant to ARM 17.8.103(1)(a) through (j), the affected emission standard or part thereof shall not be effective after the date of any such decision.

(3) The following subparts, or portions thereof, of 40 CFR Part 60, are excluded from incorporation by reference:

(a) 40 CFR 60, Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced After November 30, 1999, or for which Modification or Reconstruction is Commenced on or After June 1, 2001 (40 CFR 60.2000 through 60.2265, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit

Court of Appeals, D.C. Circuit, ruling.

(4) The following subparts, or portions thereof, of 40 CFR Part 63 are excluded from incorporation by reference:

(a) 40 CFR 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing (40 CFR 63.8380 through 63.8515, and all associated appendices and tables), as vacated March 13, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit;

(b) 40 CFR 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (40 CFR 63.8530 through 63.8665, and all associated appendices and tables), as vacated March 13, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit;

(c) 40 CFR 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR 63.7480 through 63.7575, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit;

(d) Portions of 40 CFR 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products, as vacated June 19, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.301 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) through (16) remain the same.

(17) "Process weight rate" means the rate established as follows:

(a) For continuous or long-run steady-state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof;

(b) For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(18) and (19) remain the same.

AUTH: 75-2-111, 75-2-203, 75-2-204, MCA

IMP: 75-2-203, MCA

17.8.901 DEFINITIONS In this subchapter the following definitions apply:

(1) through (10) remain the same.

(11) "Major modification" means any physical change in, or change in the method of, operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA.

(a) remains the same.

(b) A physical change in, or change in the method of, operation does not

include:

- (i) through (20) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1007 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1) For the purposes of this subchapter, the following requirements shall apply:

- (a) the requirements of ARM 17.8.906, except that 17.8.906(7) through (9) is are not applicable to offsets required under this subchapter;

- (b) remains the same.

- (c) in the case of emission offsets involving volatile organic compounds and oxides of nitrogen, offsets will generally be acceptable if they are obtained from within the areas specified in (1)(b). If the proposed offsets would be from sources located at considerable distances from the new source, the department shall increase the ratio of the required offsets and require a showing by the applicant that nearby offsets were investigated and reasonable alternatives were not available; and

- (d) in the case of emission offsets involving sulfur dioxide, particulates, and carbon monoxide, areawide mass emission offsets are not acceptable, and the applicant shall perform atmospheric simulation modeling to ensure that emission offsets provide a positive net air quality benefit. The department may exempt the applicant from the atmospheric simulation modeling requirement if the emission offsets provide a positive net air quality benefit, are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height; and

- (e) remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1201 DEFINITIONS In this subchapter, unless indicated otherwise, the following definitions apply:

- (1) and (2) remain the same.

- (3) "Affected states" means all states that are:

- (a) ~~that are~~ contiguous to Montana and whose air quality may be affected by a source requiring an air quality operating permit, permit modification, or permit renewal; or

- (b) ~~that are~~ within 50 miles of a source requiring an air quality operating permit, permit modification, or permit renewal.

- (4) through (33) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1206 INFORMATION REQUIRED FOR AIR QUALITY OPERATING PERMIT APPLICATIONS (1) and (2) remain the same.

- (3) Insignificant emissions units need not be addressed in an application for

an air quality operating permit, except that the application must include a list of such insignificant emissions units and emissions from insignificant ~~emission~~ emissions units must be included in emission inventories and are subject to assessment of permit fees. Emission inventories are to be calculated or estimated using accepted engineering methods which may include, but are not limited to, use of appropriate emission factors, material balance calculations, or best engineering judgement or process knowledge. Insignificant ~~emission~~ emissions units may be listed by category.

(4) through (11) remain the same.

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1212 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT  
CONTENT RELATING TO MONITORING, RECORDKEEPING, AND REPORTING

(1) and (2) remain the same.

(3) All applicable reporting requirements must be included in the permit.

Each air quality operating permit shall incorporate the following requirements relating to reporting:

~~(a) All applicable reporting requirements must be included in the permit.~~

(b) and (c) remain the same, but are renumbered (a) and (b).

(4) remains the same.

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

REASON: The board is proposing to amend the air quality rules to adopt the current editions of federal statutes and regulations and state rules that are incorporated by reference. This is necessary to maintain primacy from the U.S. Environmental Protection Agency (EPA) over air quality regulation in the state and to ensure that state rules incorporated by reference are the current rules.

The board is proposing to amend ARM 17.8.102 to adopt revisions to federal regulations published in the Federal Register (FR) between July 1, 2006, and June 30, 2007, that are included in the July 1, 2007, edition of the Code of Federal Regulations (CFR). Significant revisions to the affected CFR include the following:

40 CFR Part 50: amendments to 40 CFR § 50.3; 50.6(b); 50.13; Appendices K, L, N, and O. Based on its review of the air quality criteria and national ambient air quality standards (NAAQS) for particulate matter (PM), EPA revised the primary and secondary NAAQS for PM to provide increased protection of public health and welfare, respectively. Regarding primary standards for fine particles (generally referring to particles less than or equal to 2.5 micrometers (µm) in diameter, PM2.5), EPA revised the level of the 24-hour PM2.5 standard to 35 micrograms per cubic meter (µg/m3), providing increased protection against health effects associated with short-term exposure (including premature mortality and increased hospital admissions and emergency room visits), and retained the level of the annual PM2.5 standard at 15 µg/m3, continuing protection against health effects associated with

long-term exposure (including premature mortality and development of chronic respiratory disease). Regarding primary standards for particles less than or equal to 10µm in diameter (PM10), EPA retained the 24-hour PM10 standard to protect against the health effects associated with short-term exposure to coarse particles (including hospital admissions for cardiopulmonary diseases, increased respiratory symptoms, and possibly premature mortality). Finding that the available evidence did not suggest an association between long-term exposure to coarse particles at current ambient levels and health effects, EPA revoked the annual PM10 standard. EPA revised the 24-hour PM2.5 secondary standard by making it identical to the revised 24-hour PM2.5 primary standard, retained the annual PM2.5 and 24-hour PM10 secondary standards, and revoked the annual PM10 secondary standard. This suite of secondary PM standards is intended to provide protection against PM-related public welfare effects, including visibility impairment, effects on vegetation and ecosystems, and materials damage and soiling. EPA also revised its regulations so that air quality monitoring data showing an exceedance or violation of the NAAQS will not result in redesignation of the area's attainment or nonattainment status if the state adequately demonstrates that the exceedance or violation resulted from an exceptional event. The regulations require states to take reasonable measures to mitigate the impacts of an exceptional event.

40 CFR Part 51: amendments to Appendix M, finalizing Methods 203A, 203B, and 203C for determining visible emissions using data reduction procedures that are more appropriate for State Implementation Plan (SIP) rules than Method 9, the method currently used. This action was requested by the states and was needed for the special data reduction requirements in their rules. The intended effect is to provide states with an expanded array of data reduction procedures for determining compliance with their SIP opacity regulations.

40 CFR Part 53: Subpart A, Subpart C, and Subpart E, §§ 53.1; 53.2; 53.3; 53.4; 53.5; 53.8; and 53.9; Table A-1; Appendix A; §§ 53.30 through 53.35 and §§ 53.50 through 53.59. These changes, which apply to monitoring for criteria pollutants, were intended by EPA to reduce required monitoring for pollutants for which most areas have reached attainment, to better focus monitoring resources on current air quality challenges. The changes will also allow states and local monitoring agencies more flexibility to design their monitoring programs to reflect local conditions.

40 CFR Part 60: Addition of Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, which provides standards of performance applicable to manufacturers, owners, and operators of stationary compression ignition (CI) internal combustion engines (ICE) as specified in the rule; addition of Subpart KKKK, Standards of Performance for Stationary Combustion Turbines, which establishes emission standards and compliance schedules for controlling emissions from stationary combustion turbines for which construction, modification, or reconstruction commenced after February 18, 2005; and amendments to §§ 60.106(b)(3), 60.284(f), 60.752(b)(2)(iii)(A), 60.754(e), Appendix A-7, Method 24, § 6.7, Appendix B, Performance Specification 2, and §

13.2. This action amends various source testing provisions in the New Source Performance Standards (NSPS) to correct inadvertent errors and amend a testing provision.

40 CFR Part 63: Amendments to Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities. For existing area sources (large and small), the revisions require implementation of an enhanced leak detection and reporting (LDAR) program and prohibit the use of existing transfer machines. For new area sources (large and small), the revisions require implementation of an enhanced LDAR program and use of a nonvented dry-to-dry machine with a refrigerated condenser and secondary carbon adsorber. These added requirements do not apply to new coresidential sources because these sources are prohibited from using perchloroethylene (PCE). The rule prohibits the use of all existing transfer machines two years from the effective date of the rule by requiring owners or operators to eliminate any PCE emissions from clothing transfer between the washer and dryer. For coresidential area sources, the rule prohibits new PCE machines in residential buildings by requiring that owners or operators eliminate PCE emissions from dry cleaning systems installed after December 21, 2005. The revisions to Part 60 include amendments to Subpart EEEE, National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline). After promulgation of the NESHAP, the administrator received petitions for administrative reconsideration of the promulgated rule, and several petitions for judicial review of the final rule were filed in the United States Court of Appeals for the District of Columbia Circuit. On November 14, 2005, pursuant to a settlement agreement between some of the parties to the litigation, EPA published a notice of proposed amendments to address some of the concerns raised in the petitions. In this action, EPA promulgated those amendments, adding additional vapor balancing options, and making technical corrections to the rule. EPA also amended Subpart FFFF, National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing to provide additional compliance options, modify initial and continuous compliance requirements, and simplify recordkeeping and reporting requirements. Collectively, these provisions were intended to reduce the burden associated with demonstrating compliance, without affecting emissions control or the ability of enforcement agencies to ensure compliance.

Other proposed amendments to the rules include: the addition of ARM 17.8.102(2), allowing for removal of affected CFR requirements, as incorporated, without the need for rulemaking if future requirements contained in the CFR, and incorporated by reference, are vacated; the addition of ARM 17.8.102(3) and (4), providing exclusions from incorporation by reference for specific requirements of the CFR that have been vacated; and minor editorial changes to conform to the current format of the Secretary of State's office and to correct typographical errors. These nonsubstantive "housekeeping" changes would amend ARM 17.8.301, ARM 17.8.901, ARM 17.8.1007, ARM 17.8.1201, ARM 17.8.1206, and ARM 17.8.1212.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520

E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., August 14, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff

DAVID RUSOFF

Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State, July 7, 2008.